

In the United States Court of Federal Claims
OFFICE OF SPECIAL MASTERS
No. 21-0525V

MICHELLE PICKETT,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: September 5, 2024

Paul R. Brazil, Muller Brazil, LLP, Dresher, PA, for Petitioner.

Felicia Langel, U.S. Department of Justice, Washington, DC, for Respondent.

DECISION AWARDING DAMAGES¹

On January 11, 2021, Michelle Pickett filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a shoulder injury related to vaccine administration (“SIRVA”) following a Tdap vaccine she received on June 30, 2020. Petition at 1. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On December 4, 2023, a ruling on entitlement was issued, finding Petitioner entitled to compensation for her SIRVA. On September 3, 2024, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$47,500.00 for pain and suffering plus \$752.42 to satisfy a State of Ohio Medicaid lien. Proffer at 2. In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

¹ Because this Decision contains a reasoned explanation for the action taken in this case, it must be made publicly accessible and will be posted on the United States Court of Federal Claims' website, and/or at <https://www.govinfo.gov/app/collection/uscourts/national/cofc>, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2018) (Federal Management and Promotion of Electronic Government Services). **This means the Decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2018).

Pursuant to the terms stated in the attached Proffer, I **award the following:**

- **A lump sum payment of \$47,500.00 in the form of a check payable to Petitioner, Michelle Pickett; and**
- **A lump sum payment of \$752.42 in the form of a check jointly payable to Petitioner, Michelle Pickett, and Ohio Department of Medicaid, ATTN: Jamie Queen, Re: #106294456-00, Ohio Tort Recovery Unit, 5475 Rings Road, Suite 125, Dublin, OH 43017, representing reimbursement of a Medicaid lien for services received by Petitioner from the State of Ohio.**

This amount represents compensation for all damages that would be available under Section 15(a).

The Clerk of Court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Brian H. Corcoran

Brian H. Corcoran
Chief Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

MICHELLE PICKETT,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 21-525V

Chief Special Master Corcoran
ECF

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On January 11, 2021, Michelle Pickett (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act. *See* 42 U.S.C. §§ 300aa-1 to -34, as amended (“Vaccine Act”). Petitioner alleges that she suffered from a shoulder injury related to vaccine administration (“SIRVA”), as defined in the Vaccine Injury Table (“Table”), following the administration of the tetanus, diphtheria, acellular pertussis (“Tdap”) vaccine on June 30, 2020. 42 C.F.R. § 100.3(a)(I)(C); Petition at 1. On November 27, 2023, the Secretary of Health and Human Services (“respondent”) filed an amended Rule 4(c) report indicating that, in light of Chief Special Master Corcoran’s Findings of Fact that petitioner met the severity requirement, and the medical evidence submitted in this case, respondent did not dispute that petitioner had satisfied all legal prerequisites for compensation under the Vaccine Act. *See* ECF No. 33. On December 4, 2023, the Chief Special Master issued a Ruling on Entitlement finding petitioner entitled to compensation. *See* ECF No. 35.

I. Items of Compensation

A. Pain and Suffering

Based upon the evidence of record, respondent proffers that petitioner should be awarded \$47,500.00 for pain and suffering. *See* 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Medicaid Lien

Respondent proffers that petitioner should be awarded funds to satisfy the State of Ohio Medicaid lien in the amount of \$752.42, which represents full satisfaction of any right of subrogation, assignment, claim, lien, or cause of action the State of Ohio may have against any individual as a result of any Medicaid payments the State of Ohio has made to or on behalf of petitioner from the date of her eligibility for benefits through the date of judgment in this case as a result of her alleged vaccine-related injury suffered on or about June 30, 2020, under Title XIX of the Social Security Act.

These amounts represent all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

Respondent recommends that compensation provided to petitioner should be made through two lump sum payments described below, and requests that the Chief Special Master's decision and the Court's judgment award the following:¹

A. A lump sum payment of **\$47,500.00** in the form of a check payable to petitioner; and

¹ Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

- B. A lump sum payment of **\$752.42**, representing compensation for satisfaction of the State of Ohio Medicaid lien, in the form of a check payable jointly to petitioner and:

Ohio Department of Medicaid
ATTN: Jamie Queen
Re: #106294456-00
Ohio Tort Recovery Unit
5475 Rings Road Suite 125
Dublin, OH 43017

Petitioner agrees to endorse the check to Ohio Department of Medicaid for satisfaction of the Medicaid lien.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

C. SALVATORE D’ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

COLLEEN C. HARTLEY
Assistant Director
Torts Branch, Civil Division

/s/ Felicia D. Langel
FELICIA D. LANGEL
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146
Benjamin Franklin Station
Washington, D.C. 20044-0146
Tel: (202) 305-3148
felicia.d.langel@usdoj.gov

DATED: September 3, 2024